

## **PROFESSIONAL SERVICES CONTRACT**

**THIS AGREEMENT**, made this 20th day December, 2021, between the City of Marquette, hereinafter called the “City” and FilmTec Corporation., a Delaware Corporation of 974 Centre Rd., Wilmington, DE, hereinafter called “Contractor”.

In consideration of the terms and conditions contained in this Agreement, the parties agree as follows:

**1. PROJECT NAME:**

The name of the Project shall be Water Filtration Membrane Purchase.

**2. SCOPE OF WORK:**

Provide and ship the membranes, seal kits, and two weeks of on-site service support detailed in the Contractor’s proposal dated December 15, 2021. Except to the extent provided herein, the terms and conditions, including warranties, will be governed by those included in the proposal. If there is a conflict between the proposal and this Agreement, the terms of this Agreement shall control.

**3. TIME:**

Contractor shall perform all work as specified in Paragraph 2 between September 15, 2022 and October 30, 2022.

**4. ACCESS TO SITE:**

City will arrange and provide access to the site upon which it will be necessary for Contractor to perform its. In the event work is required on any site not owned by the City, City represents and warrants to Contractor that City has obtained all necessary permission and authority, in writing, for Contractor to enter upon the site and conduct its work. City shall, upon request, provide Contractor with evidence of such permission as well as acceptance of the other terms and conditions set forth herein by the owner(s) and tenant(s), if applicable, of such site(s) in a form acceptable to Contractor, which Contractor also agrees to abide by. Any work performed by Contractor with respect to obtaining permission to enter upon and do work on the lands of others, as well as any work performed by Contractor pursuant to this Agreement, shall be deemed as being done on behalf of City. Contractor shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment and shall reasonably restore the site to its prior condition.

**5. FEE:**

The fee for services shall not exceed the sum of \$692,420.00.

**6. BILLINGS/PAYMENTS:**

Contractor shall invoice for services rendered and shall be due and payable within forty-five (45) days of the date of the invoice. Invoices over forty-five (45) days past due may be charged interest on the unpaid balance at the highest lawful rate as allowed under Michigan Law.

Contractor may, after ten (10) days' written notice to the City, suspend performance of services until all past due amounts are paid.

**7. INDEPENDENT CONTRACTOR:**

The relationship between the City and Contractor created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and/or such person or entity is not intended to be or shall be construed as being a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by a Contractor authorized representative.

**8. TERMINATION OF SERVICES:**

This Agreement may be terminated by the City or Contractor should the other fail to perform its obligations hereunder. In the event the Agreement is terminated by Contractor for the failure of the City to perform its obligations, the City shall pay Contractor for services rendered to the date of termination. Notwithstanding anything else contained herein, the City may terminate this Agreement without cause upon providing six (6) months written notice to Contractor.

**9. SEVERABILITY/SECTION HEADINGS/SURVIVAL/WAIVER:**

In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions shall remain in full force and effect, and binding upon the parties hereto. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and Contractor shall survive the completion of services and the termination of this Agreement. No waiver, discharge, or renunciation of any claim or right of Contractor arising out of breach of this Agreement by City shall be effective unless in writing signed by Contractor and supported by separate consideration.

**10. APPLICABLE LAWS:**

Unless otherwise specified, the Agreement shall be governed by the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties have made and executed this Agreement the day and year first above written.

FILMTEC CORPORATION

CITY OF MARQUETTE

*Matthew Dee*

Matthew Dee, Customer Care Manager

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Jennifer A. Smith, Mayor

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Kyle Whitney, City Clerk

APPROVED AS TO FORM:

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Suzanne C. Larsen, City Attorney

APPROVED AS TO SUBSTANCE:

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Karen M. Kovacs, City Manager